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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re D.N., a Person Coming Under the
Juvenile Court Law.

H033067
(Santa Clara County
Super. Ct. No. JD17123)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

S.V.,

Defendant and Appellant.

Appellant Susan, mother of Dana¹ appeals from a juvenile court order terminating her parental rights pursuant to Welfare and Institutions Code section 366.26.² Dana was born while Susan was incarcerated. Susan arranged for Dana to live with a family friend

¹ By separate order issued this day, this court has ordered that appellant mother and the child be referred to by the above listed fictitious names in order to adequately protect their confidentiality.

² All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

who agreed to become Dana's guardian. Unfortunately, the guardianship could not be finalized because Susan repeatedly failed to appear at court hearings.

Thereafter, the Santa Clara Department of Family and Children Services (the Department) filed a petition pursuant to section 300, subdivision (b), alleging that Susan was unable to provide care for her child and had a history of substance abuse. The juvenile court ordered reunification services, including substance abuse treatment for Susan. However, because she was in and out of custody, her participation in services and visitation was inconsistent. She also tested positive for drugs at least once. Concluding that Susan had failed to make substantive progress in her reunification plan, the Department recommended terminating services at the six-month hearing. Rejecting that recommendation, the court granted further services.

By the time the juvenile court held the 12-month review hearing, Susan was once again in custody for auto theft. Although there was evidence that she had made some progress in her drug treatment plan, the court terminated services. Thereafter, at a contested hearing, the juvenile court terminated the Susan's parental rights and selected adoption as the permanent plan. This timely appeal ensued. We appointed counsel to represent appellant in this court.

Appointed counsel has filed an opening brief which states the case and the facts but raises no specific issues. (*In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*)). In the opening brief, counsel acknowledged that this court has no duty to independently review the record pursuant to *People v. Wende*,³ but requested that we allow appellant the opportunity to submit a brief in propria persona pursuant to *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 543, 544 (*Ben C.*).

In *In re Sara H.* (1997) 52 Cal.App.4th 198 (*Sara H.*), analyzing the Supreme Court's reasoning in *Sade C.*, we held that the proper course of action in a juvenile

³ *People v. Wende* (1979) 25 Cal.3d 436.

dependency case, where counsel finds no meritorious appellate issue upon scrutiny of the record, is to deem the appeal abandoned and to dismiss it. (*Id.* at pp. 201-202.) We held that we do not have discretion to review the record, under any circumstance. (*Id.* at p. 201.) The two foundational principals underlying the holdings in both *Sara H.* and *Sade C.* are the need for speedy resolutions in dependency cases, and the recognition that independent review of the record causes intolerable delay. (*Ibid.*) Despite these holdings, appellant’s counsel urges us to adopt the procedure articulated in *Ben C.* In *Ben C.* the Supreme Court held that where counsel has filed a no issue brief in a conservatorship proceeding, before dismissing the appeal as abandoned, the appellant should have the opportunity to submit a supplemental letter brief in propria persona. (*Ben C.*, supra, 40 Cal.4th at p. 544, fn. 6.)

Although *Ben C.* was a conservatorship proceeding, the rights implicated in a dependency proceeding are, at least, equally fundamental. Further, in the past, where counsel in a dependency case was preparing to file a “no issue” letter pursuant to *Sade C.*, we have allowed the appellant to file a motion to vacate the appointment of counsel so that they could file a brief in propria persona. We have often granted these motions, recognizing the fundamental nature of the rights at stake in dependency appeals as well as the due process implications of allowing an appellant adequate access to the appellate court.

Realistically, the process of allowing the appellant to file a motion to vacate counsel’s appointment and then file a supplemental brief, as we have done in the past, would likely take as long if not longer than directly notifying the appellant that he has the right to file a supplemental brief. Therefore, there is no actual prejudice to the dependent child due to any delay caused by allowing the appellant an opportunity to file a supplemental brief in propria persona. In balancing the due process interests of the appellant with the child’s need for expeditious finality, we find that appellant should be afforded an opportunity to file a supplemental letter brief in propria persona.

Based on this conclusion, we notified appellant of her right to submit written argument in her own behalf within 30 days. That period has elapsed and we have received no written argument from her. Respondent requests that we dismiss the appeal.

The appellant having failed to raise any issue on appeal, the appeal must be dismissed as abandoned. (*Ben C.*, *supra*, 40 Cal.4th 529; *Sade C.*, *supra*, 13 Cal.4th 952.)

DISPOSITION

The appeal is dismissed as abandoned.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.